IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

-

WRIT PETITION NO : 2326 OF 2004

Between:

1. Union of India, represented by its Chief Personnel Officer,

South Central Railway, Rail Nilayam, Secunderabad.

2. The Additional Divisional Railway Manager, Vijayawada

Division, South Central Railway, Vijayawada.

3. The Senior Divisional Commercial Manager, Vijayawada

Division, South Central Railway, Vijayawada.

4. The Senior Divisional Personnel Manager, Vijayawada

Division, South Central Railway, Vijayawada.

..... PETITIONERS

AND

G. Krishna S/o Yellaiah, aged 50 years, occu: Chief Ticket

Inspector (Removed), Group 'C' R/o Q.No. 603/D, R.E. Colony, Coltex Road, Vijayawada, A.P. – 520 003.

....RESPONDENT

Petition filed praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ of Ceriorari or any other appropriate Writ or Order or Direction in the nature of Writ under Article 226 of Constitution of India calling for the records relating to and connection with the Order dated: 30.10.2003 rendered in O.A.No. 80 of 2001 on the file of Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash or set aside the same as it is contrary to law.

Counsel for the Petitioners: Mr. Meherchand Noori

Mrs. C.V. Vinitha Reddy

Counsel for the Respondent: Mr. Krishna Devan

The Court made the following :

J U D G M E N T :

(per G. Bikshapathy J)

1. The Writ Petition is filed by the South Central Railway challenging the Order passed by the Central Administrative Tribunal, Hyderabad in O.A.NO. 80 of2001, dated: 30.10.2003.

2. The respondent was the applicant before the tribunal. He was working as Chief Ticket Inspector (C.T.I.) at Vijayawada. While so, he was issued with a charge memo alleging that during the period 1992- to 1995, he removed 13 defective extra fare tickets (EFTs) from the stock and put them to use and issued receipts to the passengers and thereby mis-appropriated the amount. It was alleged that the applicant has issued EFT passenger foil No. SC/A 741081 for Rs. 268/- by train No. 6004 on 14.6.1995 with difference of fare. Similarly, on 2.12.1995 he got issued EFT

No. 230340 by train No. 2711 for Rs.146/- and appropriated the said amounts without remitting the said amount to the Railways thereby he failed to maintain the absolute integrity and also failed to protect the interest of the Railways and exhibited conduct unbecoming of a Railway servant and thereby contravened Rule 3(1)(i) and (iii) of the Railway Employees Conduct Rules, 1966. The disciplinary inquiry was initiated on the basis of the investigation conducted by the Central Bureau of Investigation. He submitted the explanation denying the charges framed against him. It was specific contention that he had worked upto 4.8.1995 as C.T.I. with station duty and incharge of the Stores and money. It is also his case that he did not travel by any train and he had not issued any EFTs referred to above class got issued EFT as alleged and thereafter enquiry was conducted. Ultimately, Enquiry Officer found the applicant guilty of the charges. The disciplinary authority on accepting the findings recorded by the inquiring authority passed an Order on 7.8.2000 and imposed penalty of removal of service from the service. The penalty was affirmed by the appellate authority. Thereafter he filed O.A.NO. 80 of 2001 challenging the validity of the Order of removal passed against him. The learned tribunal after considering the matter held that the findings of the Enquiry Officer were not based on legally acceptable evidence and on the other hand, there was no evidence to sustain the charge as framed against the petitioner and therefore, set aside the Order of punishment and directed the reinstatement with other attendant benefits by an Order dated: 30.10.2003. Aggrieved by the said Order, the present Writ Petition has been filed by the Railways.

3. The learned Standing Counsel appearing for the Railways vehemently submits that the tribunal has exceeded its jurisdiction in re-appreciating the evidence and coming to a different conclusion. The tribunal itself acted as appellate authority against the Order of the punishment passed by the department, which procedure is contrary to the catena of the decisions of the Supreme Court. When once it is found that the enquiry was conducted in a fair and proper manner in accordance with rules keeping in view the principles of natural justice and by affording reasonable opportunity, the tribunal has no power to interfere with the findings of the Enquiry

Officer. He relies on the decision of the Supreme Court reported in LALIT POPLI Vs. CANARA BANK. The learned counsel would also take this Court to the evidence of various witnesses and also documents filed and submits that the findings of the tribunal are wholly unsustainable. Further also, he submits that even if the tribunal comes to a conclusion that the enquiry was not conducted properly, the tribunal is duty bound to remit the matter to the disciplinary authority for fresh enquiry, but it cannot set aside the finding and grant relief. He takes the assistance from the decisions of the Supreme Court reported in AJIT JAIN Vs. NATIONAL INSURANCE C0MPANY LIMITED and R.S. SAINI Vs. STATE OF PUNJAB.

4. On the other hand, the learned counsel for the employee submits that the tribunal is entitled to go into the aspect whether the decision making process was in accordance with law and whether the finding arrived at by the tribunal is based on evidence or whether the finding is perverse. Even though the tribunal is not entitled to reappreciate, but, yet, it has got power to consider these aspects and if the tribunal finds that the findings recorded without there being any evidence and also if finding is recorded on mis-appreciation of evidence, these findings are liable to be set aside and therefore, the Central Administrative Tribunal had correctly followed the dicta laid down by the Supreme Court and set aside the Order. He refers to the following decisions:

UNION OF INDIA Vs. H.C. GOEL, CENTRAL BANK OF INDIA Vs. PRAKASH CHAND JAIN, BHAGAT RAM Vs. STATE OF HIMACHAL PRADESH, M/s BHARAT IRON WORKS Vs. BHAGUBHAI BALUBHAI PATEL, RAJINDER KUMAR KINDRA Vs. DELHI ADMINISTRATION THROUGH SECRETARY (LABOUR), KULDEEP SINGH Vs. THE COMMISSIONER OF POLICE, YOGINATH D. BAGDE Vs. STATE OF MAHARASHTRA and BALAJI TRADERS CHIRALA Vs. PONNURI LAKSHMAIAH.

Thus the Order of the tribunal is quite legal and valid and has no grounds are made out to interfere with the Order of the tribunal.

5. The issue that arises for consideration is whether the Order of the tribunal setting aside the dismissal Order passed by the disciplinary authority is sustainable?

6. The facts are not much in dispute. The respondent was working as Chief Ticket Inspector in the South Central Railways at Vijayawada. While so, he was issued with a charge sheet on 24.7.1998 with the following charge:

> **"That Sri G. KIrishna, while functioning as CTI/Sleeper Coachers and CTI/TCG's during the period 1992-95 committed serious misconduct in that taking the advantage of his position and being the custodian of the EFT Books he removed 13 defective books from the stocks of CTI/Sleeper Coaches/Vijayawada and put them to use while he was working as CTI/Sleeper Coaches and CTI/TCG's/Vijayawada by issuing the passenger (receipt) foils to the travelling public by various trains and appropriate the amounts realised against the EFTs issued from such defective books for his pecuniary gain. In the said process Sri G. Krishna had issued one EFT passenger foil No. SC/A 741081 by train No. 6004 on 14.6.95 for Rs. 268/- towards difference of fare. Similarly, on 02.12.95 he got issued one EFT passenger foil No. 230340 by train No. 2711 for Rs. 146/- towards difference of fare and appropriate the amounts received against the said EFT foils without remitting to the Railways and thereby obtained pecuniary gain for himself and caused corresponding wrongful loss to the Indian Railways.**
>
> **Sri G. Krishna by his above acts failed in his duties to maintain absolute integrity as he failed to ensure and protect the interests of the railways and exhibited conduct unbecoming of a Railway Servant and thereby contravened Rule 3(1)(i) and (iii) of Railway Employees Conduct Rules, 1966."**

It was denied by the respondent and thereafter enquiry was conducted. In the enquiry, the Enquiry Officer found him guilty of the charge and consequently he was dismissed from service.

7. It is one of the contentions raised by the learned counsel for the petitioner that the

jurisdiction of the tribunal to interfere with the Order of punishment is very limited and when once it is found that the procedure as contemplated under the Rules keeping in view the principles of natural justice is followed, it would not be appropriate for the Court to interfere with the Order of punishment.

8. The Supreme Court in the case relied on by the learned Standing Counsel for the Central Government reported in Lalit Popli's case (1st cited supra) observed in para 16 thus:

> **"While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not ak,n to adjudication of the case on merits as an Appellate Authority."**

With regard to the appreciation of the evidence also, the Supreme Court observed in para 15 thus:

> **"It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him: whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. [See STATE OF RAJASTHAN V. B.K. MEENA AND ORS. (1996) 6 SCC 417)]. In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct."**

The Supreme Court also referred to B.C. CHATURVEDI Vs. UNION OF INDIA

(1995(6) S.C.C. 749) and also R.S. SAINI's case (3rd cited supra), wherein the Supreme Court observed that the scope of judicial review by the Courts ought to be on the decision making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own finding. It is also not open for this Court to reverse the finding of the inquiring authority for lack of sufficient evidence. However, if there is some evidence reasonably supporting the conclusion of the inquiring authority, it would not be the function of the Court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter, which can be permitted to be canvassed before the Court in writ proceedings.

9. It is also contended for the respondent that thought the interference of the tribunal is very limited, but yet, it has found that the said finding was recorded on no evidence or the inquiring authority failed to consider the relevant evidence or considered the irrelevant matter or that the finding is so perverse that a man of ordinary prudence would come to such a finding. Then, the tribunal could be justified in interfering with the Order. The learned counsel would also submit that merely because the Court records the finding as perverse, it cannot be inferred that the Court had undertaken the process of re-appreciation. He cited number of citations in this regard.

10. It is well-settled principle right from STATE OF ANDHRA PRADESH Vs. SREE RAM RAO that the High Court sitting Under Article 226 of Constitution of India is not a Court of Appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is only concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. However, the High Court may undoubtedly interfere where the departmental

authorities held the proceedings against the delinquent in a manner inconsistent with the principles of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion or on similar grounds. The adequacy and sufficiency of the evidence is not a matter, which can be canvassed before the High Court. This decision was followed in CENTRAL BANK OF INDIA V. PRAKASH CHAND JAIN and BHARAT IRON WORKS V. BHAGUBHAI BALUBHAI PATEL. In RAJINDER KUMAR KINDRA V. DELHI ADMINISTRATION THROUGH SECRETARY (LABOUR), wherein it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial Tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated. The said view was reiterated in YOGINATH D.BAGDE Vs. STATE OF MAHARASHTRA.

11. In NAND KISHORE V. STATE OF BIHAR, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and, that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.

12. The High Court in cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate Court/authority. The jurisdiction of the High Court in such cases is very limited, for instance where it is found that the domestic enquiry is vitiated because of the non-observance of principles of natural justice, denial of reasonable opportunity, findings are based on no evidence and/or the punishment is totally disproportionate to the proved misconduct of an employee. (See: INDIAL OIL CORPORATION Vs. ASHOK KUMAR ARORA (AIR1997 S.C.C. 1030).

13. A broad distinction has to be maintained between the decision which is perverse and those, which are not. If a decision is arrived at on no evidence or it is thoroughly unreliable or no reasonable person can act on it, the Order would be perverse. But, if there is some evidence on record, which is acceptable and which could be relied upon, how so ever compendious it may be the conclusion would not be treated as perverse and the findings would not be interfered with (See: KULDIP SINGH Vs. COMMISSIONER OF POLICE (AIR 1999 S.C. 677).

14. It is clear from the aforesaid decisions that in departmental proceedings, the disciplinary authority is the sole Judge of a fact and in case an appeal is presented to the appellate authority, the appellate authority has also the powers of a Judge and jurisdiction to reappreciate the evidence and come to its own conclusion on facts being the sole fact finding authority. Once finding of fact based on evidence is recorded, the High Court in writ jurisdiction may not normally interfere with the proceedings, unless it finds that the recorded findings were based either on no evidence or that the findings are wholly perverse and which are legally untenable. The adequacy or inadequacy is not permitted to be canvassed before the High Court, since High Court does not sit as an appellate authority over the factual finding recorded in departmental proceedings. While exercising the power of the judicial review, the High Court cannot, normally speaking, substitute its own conclusion with regard to the guilt of the delinquent for the departmental authorities. Even so far as

the imposition of the penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary authority is either impermissible or such that it shocks the conscience of High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Even though, the power of judicial review of being expected to be flexible and its dimension not closed, yet the Court in exercise of the power of its judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those Orders are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. The disciplinary enquiry is not a criminal trial. The Standard of proof required to be proved is preponderance of probabilities and not proof beyond reasonable doubt. It has to be remembered that the judicial review is directed not against the decision, but is confined to the examination of the decision-making process. In the words of Lord Haltom in Chief Constable of the North Wales Police v. Evans (1982) 3 All ER 141, it was observed:

> **"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the Court."**

15. In the instant case, the tribunal observed that there was no evidence in respect of the charge that the respondent got issued one EFT passenger file on 2.12.1993. In fact the tribunal also observed that the very person Chandramohan Rao has not supported the case of the department, who was examined as P.W.6. Therefore, it is a case of no evidence and such a finding cannot be recorded by an Enquiry Officer in the wake of evidence. It is also not brought before the Court as to any action that was taken against the said Chandramohan Rao. In respect of the other charge of issue of EFT on 14.6.1995 under the signature of the petitioner, the tribunal found that there was no evidence at all to establish the applicant was on duty on 14.6.1995 and that nominated Inspector had to keep the custody of EFT books. Further, the tribunal also found that the Government Examiner for Questioned Documents for the

2nd time gave report contrary to the earlier report and he was not examined by the Enquiry Officer. The tribunal found that such an opinion could not have been taken into consideration. While we find that the opinion of the expert is not binding and it is always open for the Enquiry Officer to come to the conclusion independently, but when the said report was sought to be relied on, the tribunal found that he should have been examined in support of the department. Thus, the petitioner was denied of the opportunity to cross examine the Government Examiner of the Questioned Documents Mr. Goel, who gave the revised opinion. But, this contention cannot be accepted as the opinion of the Government Examiner is not binding and if the finding was recorded solely basing on the opinion, it would be appropriate that the expert ought to have examined. The tribunal found fault on this score also. The tribunal finally observed in para 17 of the judgment as follows:

> **"Thus, on a close scrutiny of the entire evidence placed on record during inquiry, we find that there is no legally acceptable evidence in support of the findings recorded by the Inquiry Officer and the Disciplinary Authority that the article of charge framed against the applicant has been established. All the above mentioned aspects have not been taken into consideration by the Inquiry Officer as well as by the Disciplinary authority in assessing the evidence of the witnesses examined during the inquiry and we are not inclined to hold that the conclusion reached by the said authorities that the article of charge has been proved is based on any legally acceptable evidence. Further, it is found from their reports that they have taken into consideration the revised opinion of the Government Examiner of Questioned Documents without examining the said witness in the inquiry and without affording an opportunity to the applicant to cross-examine him and they have also come to the conclusions on the basis of the previous statements given by the witnesses though the witnesses have not supported the previous statements given by them in the absence of the applicant, and even clarified the circumstances under which the said previous statements were given by them. While assessing the evidence of the witnesses, the Inquiry Officer ought to have taken into consideration the answers given by the witnesses in their cross-examination and the clarifications given by them, instead of acting upon the evidence given by the witnesses in their chief examination and in their previous statements."**

Thus, we find from the Order of the tribunal that it has gone into the aspect whether the decision making process was in accordance with law settled by the Supreme Court in catena of decisions. While, we have reiterate that it is not in the realm of the tribunal to reappreciate the evidence on record, but it cannot be said that it is not within the jurisdiction of the tribunal to find out whether there was no evidence on the finding recorded by the tribunal. It cannot be disputed that if the finding is recorded without there being any evidence, such a finding cannot be sustained. Even if the finding is perverse namely that a man of ordinary prudence would not come to such a conclusion in such a case also, the tribunal is justified in interfering with the punishment. The appreciation of evidence as held by the Supreme Court has to be in accordance with law namely the entire legal evidence has to be considered. But, however, if the evidence only supporting the case of the department is taken into consideration and the other evidence which is equally supporting the case of the employee is omitted to be considered, it would be nothing but non-application of the mind and biased the attitude of the Enquiry Officer. The tribunal in this regard observed that only some of the statements of the witnesses in the chief examination was picked up and finding was sought to be recorded on that basis. Under those circumstances, the tribunal quite rightly came to the conclusion that the process adopted for arriving a decision is illegal and contrary to law and when it is a case of no evidence or perverse finding, the question of remitting the matter to the authorities would not arise. The learned Standing Counsel for the Central Government, however, submits that the inquiry was found to be defective, the matter ought to have been remitted back to the authorities. But, all the cases need not be remitted back and each case can be decided on its own merits. In the instant case, it is a case of no evidence and also perversity of finding. In such a situation, it would not be appropriate to remit either to fill up the lacuna by the department or to set right the perversity in finding. It is only where the opportunity was denied to the employee and principles of natural justice have been violated the matter could be remitted to the authorities to conduct the enquiry from the stage when the opportunity was refused.

16. This Court is sitting under Article 226/227 of Constitution of India against the Order passed by the Central Administrative Tribunal and when the tribunal has reached a conclusion which cannot be said to be illegal and without jurisdiction, it would not also be appropriate for this Court to interfere with such finding. Thus, we do not find any merits in the Writ Petition.

17. Accordingly, the Writ Petition is dismissed. No costs.

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G.BIKSHAPATHY, J

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P.S. NARAYANA, J

2-3-2005

CHV

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SECTION OFFICER

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(FOR HIS LORDSHIP'S KIND PERUSAL)

One fair copy to the Hon'ble Mr. Justice P.S. Narayana (For His Lordship's kind perusal)

To

1. Chief Personnel Officer,

South Central Railway, Rail Nilayam, Secunderabad.

2. The Additional Divisional Railway Manager, Vijayawada

Division, South Central Railway, Vijayawada.

3. The Senior Divisional Commercial Manager, Vijayawada

Division, South Central Railway, Vijayawada.

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